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PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 25th December 1965

G.S.R.1893.—In exercise of the powers conferred by section 3 of the Defence of India Act, 1962 (51 of 1962), the Central Government hereby makes the following rules further to amend the Defence of India Rules, 1962, namely:—

1. **Short title.**—These rules may be called the Defence of India (Seventh Amendment) Rules, 1965.

2. **Amendment of Defence of India Rules, 1962.**—In the Defence of India Rules, 1962,—

(i) after rule 25, the following rule shall be inserted, namely:—

"25A. *Migration to any enemy territory or occupied territory.*—(1) No person who, at any time whether before or after the coming into force of this rule, has voluntarily migrated, to an enemy territory or an occupied territory, shall enter India, or, as the case may be, any other part of India, except with the prior permission of the Central Government or such other authority as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) For the purpose of granting permission under sub-rule (1), the Central Government or the authority specified by the Central Government may take into consideration the circumstances under which such person had migrated to an enemy territory or occupied territory and such other cause as may be shown by such person.

(3) For the purposes of this rule, a person who moves into—

(a) an enemy territory without obtaining a passport under the Indian Passport Act, 1920 (34 of 1920), or without any other lawful authority, or

(b) an occupied territory without lawful authority,

shall be presumed to have voluntarily migrated to an enemy territory or occupied territory, as the case may be.

(4) If any person contravenes this rule, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.";

(ii) in rule 125, to clause (b) of sub-rule (9), the following proviso shall be added, namely:—

"Provided that where an order made under this rule relating to foodstuffs so provides, any court trying a contravention of the order may also direct that all packages, coverings, or receptacles in which such food-stuffs are found and every animal, vehicle, vessel or other conveyance used in carrying such food-stuffs shall be forfeited to Government."

(iii) after rule 125A, the following rule shall be inserted, namely:—

"125AA. *Shops trading in essential articles.*—(1) In this rule,—

(a) "essential article" means an article which the Central Government, being of opinion that the maintenance of the supply thereof is essential to the life of the community, declares by order in writing to be an essential article;

(b) "essential business" means,—

(i) in relation to a wholesale establishment, wholesale trade in essential articles;

(ii) in relation to a shop, retail trade in Scheduled articles; and

(iii) in relation to a restaurant, the business of supplying meals or refreshments for consumption on the premises;

(c) "proprietor" of a wholesale establishment, shop or restaurant includes any person responsible for the management thereof;

(d) "restaurant" means any premises wherein is carried on, whether or not in addition to other forms of business, the business of supplying meals or refreshments to the public or a class of the public, for consumption on the premises;

(e) "Scheduled article" means an article specified in the Schedule to this rule, and includes an article which the Central Government, being of opinion that the maintenance of the supply thereof is essential to the life of the community, declares by order in writing to be a Scheduled article;

(f) "shop" means any premises wherein any retail trade is carried on in Scheduled articles, whether or not in addition to retail trade in other articles and whether for the benefit of the public generally or of a class or classes of persons only;

(g) "wholesale establishment" means any premises wherein any wholesale trade is carried on in essential articles, whether or not in addition to wholesale trade in other articles, or wherein any essential articles are kept, whether or not in addition to other articles, for wholesale trade.

(2) The Central Government, if it considers it necessary for the purpose of maintaining supplies essential to the life of the community, may, by general or special order and subject to the provisions of any law for the time being in force relating to shop-hours, require the proprietor of a wholesale establishment, shop or restaurant to keep open the establishment, shop or restaurant for the conduct of the essential business thereof during such period or periods as may be specified in the order.

(3) No proprietor of a wholesale establishment, shop or restaurant shall close the wholesale establishment, shop or restaurant in contravention of any order made under sub-rule (2) or suffer the same to be closed.

(4) If a wholesale establishment, shop or restaurant is closed in contravention of sub-rule (3), the Central Government or any person authorised by it by general or special order in this behalf may cause the wholesale establishment,

shop or restaurant to be opened and the essential business thereof to be carried on through such agency as it or he may think fit and at such prices as may be specified in the order, and may use or cause to be used all such force as may be necessary for the enforcement of this sub-rule.

(5) where the essential business of a wholesale establishment, shop or restaurant is carried on in pursuance of an order under sub-rule (4), all stock-in-trade relevant to the essential business thereof may be sold or disposed of by the agency through which the essential business is carried on, and there shall be paid to the proprietor of the wholesale establishment, shop or restaurant a sum certified by the Central Government or by a person authorised by it in this behalf as representing the proceeds of the sale or disposal of such stock-in-trade less the amount of the cost of carrying on the essential business of the wholesale establishment, shop or restaurant and the sum so certified shall be final and shall not be called in question in any court.

(6) Where the proprietor of a wholesale establishment, shop or restaurant does not close the wholesale establishment, shop or restaurant in contravention of an order made under sub-rule (2) but refuses to carry on the essential business thereof during the period or periods specified in such order, either absolutely or except on terms in excess of the normal, the wholesale establishment, shop or restaurant shall be deemed to be closed in contravention of sub-rule (3) for all purposes of this rule.

(7) Any person who contravenes any of the provisions of this rule or any order made thereunder shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both:

Provided that where an order made under this rule so provides, any Court trying a contravention of the order may direct that any licence under which the offender holds the wholesale establishment, shop or restaurant shall stand revoked.

(8) Where the premises in which any wholesale establishment, shop or restaurant is located are held under a lease, and the lessee of such premises contravenes any provisions of this rule or any order made thereunder, the Court trying a contravention of this rule or any order made thereunder may, if the order so provides, direct that the lease of such premises shall stand determined and that the lessor shall have an instant right of re-entry therein.

THE SCHEDULE

1. Grains, pulses and flour and any foodstuffs made from any of them.
2. Sugar and gur.
3. Milk and milk-products.
4. Eggs.
5. Vegetable oils.
6. Vegetables and fruits, all sorts.
7. Meat, fish and poultry.
8. Spices.
9. Salt.
10. Kerosene oil.
11. Charcoal, steam-coal and fire-wood.
12. Matches.
13. Medicines.
14. Household soap.
15. Fodder, bran, pollard and oilcakes.
16. Clothes, cotton and woollen.
17. Footwear.
18. Lamps.";

(iv) after rule 135A, the following rule shall be inserted, namely:—

"135B. *Migrant Property.*—(1) In this rule unless the context otherwise requires,—

(i) 'migrant' means any individual who, at any time whether before or after the coming into force of this rule, has voluntarily migrated to an enemy territory or an occupied territory;

Explanation.—A person who at any time whether before or after the coming into force of this rule, has moved into an enemy territory or an occupied territory without obtaining a passport under the Indian Passport Act, 1920 (34 of 1920) or without any other lawful authority, shall be presumed to be a migrant.

(ii) 'migrant firm' means—

(a) any firm, whether constituted in India or not, of which any member or officer is a migrant and which is carrying on business in India; or

(b) any company, whether incorporated in India or not, of which any officer is a migrant and which is carrying on business in India, or

(c) any person or body of persons, whether incorporated or not, who or which, in the opinion of the Central Government is carrying on business in India—

(1) under the control, whether direct or indirect, of a migrant, or

(2) wholly or mainly for the benefit of migrants generally or any class of migrants or any individual migrant;

(iii) 'migrant property' means any property for the time being belonging to or held or managed on behalf of a migrant or a migrant firm.

(2) With a view to preventing the payment of moneys to a migrant and preserving migrant property, the Central Government may appoint a Custodian of Migrant Property for India and one or more Deputy Custodians and Assistant Custodians of Migrant Property for such local areas as may be prescribed and may by order—

(a) require the payment to the prescribed custodian of money which would but for this rule be payable to or for the benefit of a migrant; or which would but for the provisions of sub-rule (8) and sub-rule (10) be payable to any other person and upon such payment the said money shall be deemed to be property vested in the prescribed custodian;

(b) vest, or provide for and regulate the vesting, in the prescribed custodian such migrant property as may be prescribed;

(c) vest in the prescribed custodian the right to transfer such other migrant property as may be prescribed, being migrant property which has not been, and is not required by the order to be, vested in the custodian;

(d) confer and impose on the custodian and on any other person such rights, powers, duties and liabilities as may be prescribed as respects—

(i) property which has been or is required to be, vested in a custodian by or under the order,

(ii) property of which the right of transfer has been, or is required to be, so vested,

(iii) any other migrant property which has not been, and is not required to be, so vested;

(iv) money which has been, or is by the order required to be, paid to a custodian;

(e) require the payment of the prescribed fees to the custodian in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;

(f) require any person to furnish to the custodian such returns, accounts and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order;

and any such order may contain such incidental and supplementary provisions as appear to the Central Government to be necessary or expedient for the purposes of the order.

(3) Where any order with respect to any money or property is addressed to any person by a custodian and accompanied by a certificate of the custodian that the money or property is money or property to which an order under sub-rule (2) applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the order of the custodian, he shall not be liable to any suit or other legal proceeding by reason only of such compliance.

(4) Where, in pursuance of an order made under sub-rule (2)—

(a) any money is paid to a custodian, or

(b) any property, or the right to transfer any property, is vested in a custodian, or

(c) an order is given to any person by a custodian in relation to any property which appears to the custodian to be property to which the order under sub-rule (2) applies,

neither the payment, vesting nor order of the custodian nor any proceedings in consequence thereof, shall be invalidated or affected by reason only that at a material time—

(i) some person who was or might have been interested in the money or property, and who was a migrant, had died or had ceased to be a migrant, or

(ii) some person who was so interested, and who was believed by the custodian to be a migrant, was not a migrant.

(5) In sub-rules (2), (3), (4) and (12), the expression "custodian" includes a Deputy Custodian of Migrant Property and an Assistant Custodian of Migrant Property.

(6) If any person pays any debt or deals with any property to which any order under sub-rule (2) applies otherwise than in accordance with the provisions of the order, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and the payment or dealing shall be void.

(7) If any person without reasonable cause fails to produce or furnish in accordance with the requirements of an order under sub-rule (2) any document or information which he is required under the order to produce or furnish, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(8) Where it appears to the Central Government that a contract entered into, whether before or after the coming into force of this rule, with a person who at the time of such contract was, or subsequent to such contract became, a migrant is injurious to the public interest or was entered into with a view to evade the provisions of this rule, the Central Government may, by order, cancel or determine such contract either unconditionally or upon such conditions as it thinks fit.

(9) (a) Where it appears to the Central Government that a transfer of property, movable or immovable, made, whether before or after the coming into force of this rule, to or by a person who at the time of such transfer was, or subsequent to such transfer became, a migrant is injurious to the public interest or was made with a view to evade the provisions of this rule, the Central Government may, by order, declare such transfer, and any subsequent transfer or sub-transfer of the same property or part thereof, to be void, either in whole or in part, or may impose such conditions on the transferee as it thinks fit.

(b) On the making of an order under the foregoing provisions of this sub-rule, declaring any transfer, subsequent transfer or sub-transfer of any property to be void, that property shall, with effect from the date of the order, be deemed to be re-vested in the original transferor.

(10) (a) No transfer of a negotiable instrument or an actionable claim by or on behalf of a migrant nor any subsequent transfer thereof shall, except with the sanction of the Central Government, be effective so as to confer any rights or remedies in respect of the negotiable instrument or, as the case may be, the actionable claim.

(b) If any person by payment or otherwise purports to discharge any liability from which he is relieved by this sub-rule knowing the facts by virtue of which he is so relieved, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both:

Provided that in any proceedings in pursuance of this sub-rule it shall be a defence for the accused to prove that at the time when he purported to discharge the liability in question he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being a court in India or in a State committing external aggression against India, and would be enforced against him by such an order.

(c) Where a claim in respect of a negotiable instrument or an actionable claim is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would thereby be committing an offence punishable under this sub-rule, that person may pay into a competent civil court any sum which but for the provisions of this sub-rule would be due in respect of the claim and thereupon the payment shall for all purposes be a good discharge to that person.

(11) The provisions of this rule shall, so far as may be, apply in relation to a migrant firm as they apply in relation to a migrant.

(12) Where in pursuance of an order made under sub-rule (2) read with sub-rule (11), the assets of a company are vested in the custodian, no proceeding, civil or criminal, shall be instituted under the Companies Act, 1956, against the company or any director, manager or other officer thereof except with the consent in writing of the custodian.";

(v) after rule 153, the following rules shall be inserted, namely:—

"153A. *Proclamation for person absconding.*—(1) If upon a report in writing made by a police officer any Court has reason to believe (whether after taking evidence or not) that any person who has committed an offence punishable under sub-section (1) of section 5 of the Defence of India Act, 1962, has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 87 of the Code of Criminal Procedure, 1898 (5 of 1898), publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this rule have been complied with, and that proclamation was published on such day.

153B. *Attachment of property of person absconding.*—The Court issuing a proclamation under rule 153A may, at any time, order the attachment of any property, movable or immovable, or both belonging to the proclaimed person and thereupon the provisions of section 88 of the Code of Criminal Procedure, 1898 (5 of 1898), shall apply to such attachment as if,—

(i) such attachment were made under that Code, and

(ii) in sub-sections (6A) and (7) of that section, for the words "six months", the words "one month" were substituted.

153C. *Restoration of attached property.*—If within six-months from the date of the attachment, any person whose property is or has been under the disposal of the State Government under sub-section (7) of section 88 of the Code of Criminal Procedure, 1898, (5 of 1898), read with rule 153B, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached or the Court to which such Court is subordinate and proves to the satisfaction of such Court that he did not abscond or conceal himself for

the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property shall, after satisfying thereout all costs incurred in consequence of the attachment be delivered to him.";

(vi) in rule 156, in sub-rule (1), for the words "such force", the words "such force, including the locking or sealing of any premises until a search or inspection thereof or seizure of any articles or things therein has been completed," shall be constituted.

[No. F. 3/12/65-Poll(Spl.).]

A. D. PANDE, Jt. Secy.

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